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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Request of Lockheed Martin Corporation and)
Warburg, Pincus & Co. for Review of the)
Transfer of the Lockheed Martin)
Communications Industry Services Business)
From Lockheed Martin Corporation to an)
Affiliate of Warburg Pincus & Co.)

CC Docket No. 92-237
NSD File No. 98-151

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Comments of MCI WorldCom, Inc.

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

MCI WorldCom, Inc. ("MCI WorldCom") submits this filing in response to a public notice released by the Federal Communications Commission ("Commission") on February 17, 1999 requesting comment on the proposed transfer of Lockheed Martin Communications Industry Services (CIS) Business to E.M. Warburg, Pincus & Co. LLC. ("Warburg Pincus"). The CIS business unit of Lockheed Martin IMS serves as the North American Numbering Plan Administrator (NANPA) and also as the local number portability administrator (LNPA).

MCI WorldCom urges the Commission to find under its rules that existing interests reported by Warburg Pincus would cause CIS to fail the neutrality test required for a neutral third party administrator, but that the tangential relationship between Warburg Pincus' existing telecommunications interests and North American Numbering Plan Administration (NANPA) or local number portability administration (LNPA) activities, coupled with commitments Warburg Pincus and CIS have made concerning current and future conduct, are sufficient to allow Warburg Pincus to purchase and

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operate the CIS business. In MCI WorldCom's view, it is critical that the Commission delineate those commitments in its order permitting the transfer to proceed.

I. INTRODUCTION

MCI WorldCom's purpose in filing is to comment on the pertinent issues of neutrality and the ability of the new entity to perform the NANPA functions.

Specifically, the Commission asked for comment on the following:

- (1) Neutrality of the CIS Acquisition Corporation (CISAC), on the basis of the neutrality criteria set forth in the Requirements Document, as well as the Commission's rules and orders;
- (2) Ability of CISAC to perform the functions of the NANPA in accordance with the Requirements Document;
- (3) Commitment of CISAC to perform the functions of the NANPA at the price agreed to by Lockheed Martin; and,
- (4) Ability and commitment of CISAC to fulfill the remainder of Lockheed Martin's current term as NANPA, without compromising its neutrality and the resources needed to administer the NANP.

Parties should not use this forum to renegotiate the price or other terms and conditions for NANPA services,¹ or to critique the past and or current performance of the NANPA. Other more appropriate venues exist for comment on NANPA's performance.

¹ Of course, there are significant issues relating to the LNPA contracts and the proposal to incorporate CIS as a stand-alone company. Now that CIS will not have the financial backing of a Lockheed Martin or equivalent, it is appropriate and necessary to review certain terms in the LNPA contracts.

The Commission should disregard any comments that do not address the Commission's express purpose in evaluating the neutrality and capability of the new organization under the proposed transfer.

In addition, MCI WorldCom agrees that given the change of ownership of CIS, the Commission must examine this transfer to ensure that its decisions to place these functions in the hands of a neutral third party is preserved.

II. CISAC'S PARENT'S INVESTMENTS RENDER IT NOT NEUTRAL

Neutrality of the NANPA is vital to the industry. The Telecommunications Act of 1996 ("Act"), the Commission's rules, and the Requirements Document all require that the NANPA must be an impartial, "competitively neutral" entity.² In particular, the Requirements Document states that the respondent to the NANPA proposal may not be

"an affiliate of any telecom service provider as defined in the Act. 'Affiliate' is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly, (i) an equity interest by the stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten (10 %) percent or more of the total outstanding equity interests in the other person, or (ii) the power to vote ten (10%) or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person, or (iii) the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest) of such other person..."³

The pending transfer of CIS from LM IMS to CISAC, a newly formed subsidiary of a Warburg Pincus & Co. affiliate, Warburg Pincus Equity Partners, LP (WPEP) fails

² Telecommunications Act of 1996, Pub. L. No. 104-104, Sec. 251(e)(1); Administration of the North American Numbering Plan, *Report and Order*, CC Docket 92-237, Rel. Oct. 9, 1997, NANC Requirements Document, February 20, 1997, Section 1.2, page 2.

³ Requirements Document, p. 2.

the neutrality test set out above. Formed specifically for the transfer, CISAC's sole business objective will be to provide NANPA and other neutral third party services to the telecommunications industry. However, its parent, WPEP, is a private equity fund with ownership interests in specific telecommunications service providers (telecom providers) of greater than 10 percent in telecom providers. WPEP's investments include:

- Covad Communications Co. ("Covad"): 34 percent investment, which is expected to be reduced to 25 percent;
- Esprit Telecom Group plc ("Esprit"): 12 percent, to be reduced to 5 percent;
- Primus Telecommunications Group, Inc. ("Primus"): 14 percent and
- NTL Telecommunications, Inc. ("NTL"): about 6 percent.⁴

MCI WorldCom notes that none of the telecom carriers in which Warburg Pincus has invested now uses numbering resources administered by the NANPA. However, Covad, a certified competitive local exchange carrier in 12 states, now providing packet-based dedicated digital services, is authorized to apply for telephone numbers should it decide to pursue the local service market. The Requirements Document's neutrality criteria are quite clear regarding the maximum limit of investment in a carrier. It is also quite clear that the pending new parent of CIS fails the neutrality test.

However, MCI WorldCom believes that factual circumstances presented in this case, together with Warburg Pincus' commitments concerning current and future conduct, are sufficient to allow the Commission to permit the transfer to proceed. As neutrality of CIS. Moreover, Warburg Pincus and CIS have offered commitments about

⁴ Request for Expeditious Review of the Transfer of the Lockheed martin Communications Industry Service Business, filed Dec. 21, 1998, p. 16.

how they will operate the CIS business, and how they will alert the Commission and the discussed below, the telecommunications interests held by Warburg Pincus are not at this moment of a nature or type that would give rise to concerns to about the continuing industry to future neutrality issues should these arise. Based on these commitments MCI WorldCom supports the proposed transfer. At the same time, we urge the Commission to specifically delineate in its order these commitments so there can be no confusion in the future about the conditions Warburg Pincus and CIS agreed to accept.

Moreover, the industry as well as the Commission has an interest in not disrupting ongoing NANP administration. Given that CIS' current parent, Lockheed Martin has filed to acquire Comsat, it appears that a finding that Warburg Pincus is not neutral would create uncertainty as to CIS' future and the possible need to re-bid the award. This result would be time conserving and disruptive. MCI WorldCom believes that the Commission should not act to disrupt an existing agreement unless there is reason to believe that the new administrator can not function in a neutral manner. To make that evaluation, the Commission needs to look beyond the "10 percent rule" to examine all the facts and circumstances of the case. When that examination is made here, MCI WorldCom believes that CIS can continue to administer NANP in a neutral manner.

Warburg Pincus and CIS have proposed a Code of Conduct for CISAC to include quarterly audits at CISAC's expense to review its behavior and performance relative to the neutrality requirements of the industry. Audit reports will be given to the Commission, the NANC and the limited liability companies ("LLC") with whom CIS has contracts for local number portability administration.

Additionally, Warburg Pincus has stated that it will report to the Commission, NANC and the LLCs (1) within 20 days after Warburg Pincus acquires an equity interest of 5 percent or more in any U.S. telecommunications company, and (2) within 20 days after Warburg Pincus becomes aware that an entity in which it invests has begun to use numbering resources. These commitments and others have been made part of the public record in a Supplemental Response filed April 12 by Lockheed Martin Corp., Lockheed Martin IMS (parent of CIS) and Warburg Pincus. MCI WorldCom urges the Commission to mandate all these commitments and the Code of Conduct in its order permitting the transfer to occur.

Further, MCI WorldCom urges the Commission to decide that it will put out for public comment as a routine matter the equity interest reports filed by Warburg Pincus so the public may cite any concerns and flag issues that the Commission should investigate.

MCI WorldCom stresses that it is critical that the Commission make it unequivocally clear that the Commission remains free to act to ensure operation of the NANPA remains neutral. As Warburg Pincus undertakes future investment in telecom providers, the Commission may review any instance in which Warburg Pincus' neutrality may be questioned. MCI WorldCom believes the Commission is free to take any reasonable steps to ensure operation of the NANPA is neutral. The Commission must put Warburg Pincus and CISAC on notice by stating its ability and intent to act as necessary in its transfer order.

III. FINANCIAL CONCERNS REMAIN REGARDING ADEQUATE BACKING

Warburg Pincus has stated that CISAC is adequately capitalized,⁵ yet has not released the capitalization amount. Sufficient capitalization is essential for CISAC to undertake the development and provision of additional functions and enhancements to remain an effective NANPA and Warburg Pincus' demurrer at providing "parental guarantees" does nothing to build confidence or to quiet financial questions. Of course, the crux of this concern is whether CIS is adequately capitalized to administer the LNPA, which is not the subject of this pleading.

As CIS itself states, CIS hopes to pursue a business plan that may well broaden to include number resource optimization activities such as number pooling or other third party functions identified by the Commission. CISAC itself is a new company formed wholly to acquire LM IMS' CIS business unit and to assume all the responsibilities that LM IMS held. There is no financial history on which to base confidence for CISAC.

MCI WorldCom understands that the LLCs are exploring a potential resolution of this issue with CIS to ensure that LNP functions are financially protected. MCI WorldCom has urged CIS to provide an acknowledgement on the public record of the successful completion of that negotiation at the appropriate time. We believe this acknowledgement is important since such arrangements may be necessary should CIS continue to pursue and win third party administration contracts.

⁵ Joint Lockheed Martin IMS and Warburg Pincus Response to Questions and Issues Regarding Transfer of the Lockheed Martin Communications Industry Services Business, CC Docket No. 92-237, NSD File No. 98-151, Feb. 16, p. 6.

IV. MCI WORLDCOM CAN SUPPORT TRANSFER IF CONDITIONS ARE MET

If the operational and financial conditions that MCI WorldCom has proposed or supported are met and the additional commitments now part of the public record are mandated by the Commission, then MCI WorldCom can support the transfer of LM IMS' CIS to Warburg Pincus' CISAC.

While MCI WorldCom would support the transfer as long as the April 12th commitments and conditions are required by the Commission, we urge the Commission to reject the faulty reasoning posed by the joint LM IMS-Warburg Pincus response supporting the transfer.

The argument that the Warburg Pincus investment in telecom providers is an "equity" investment as distinct from a "strategic investment" therefore Warburg Pincus is neutral regardless of investment percent in telecom providers may be meaningful on Wall Street but is meaningless in the context of the Telecommunications Act and this instance. The Commission should not base its rationale on the unsustainable distinction that an entity is neutral if investment is for equity purposes versus strategic purposes. The point is the investment and the amount of investment, not the motive behind the investment.

Rather, a sound rationale for the Commission on which to base its decision includes the fact that the companies invested in by Warburg Pincus do not use numbering resources and constitute overall a rather small investment by Warburg Pincus along with the conditions accepted by Warburg Pincus and CISAC.

Additionally, MCI WorldCom notes that despite arguments to the contrary as cited by LM IMS in a March 22 letter, the Code of Conduct is not a "firewall." The Commission must not accept that inaccurate characterization for and certainly not

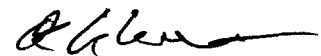
endorse the Code of Conduct as a firewall. The Code of Conduct is a good faith effort by CISAC and Warburg Pincus to act honorably, not a structural safeguard. While admirable, and surely to be expected, a good faith effort can not be equated with a firewall. There is no total separation. There will be Warburg Pincus directors on CISAC's board. Employees may be shared. As future investments by Warburg Pincus may dictate the need for a true firewall, the Commission must not be mislead into agreeing one already exists.

Finally, we note outstanding issues remain between the LLCs and LM IMS. We have no public comment as those discussions continue. We ask the Commission, however, to the extent such discussions produce results which may be made public, that conditions or commitments in the LNP context also be required via Commission order.

MCI WorldCom therefore supports the transition of NANPA from Lockheed Martin's CIS unit to Warburg Pincus' CISAC, pursuant to the commitments made Warburg Pincus and CIS. With all of these safeguards, MCI WorldCom and the industry can be more confident that the new entity will perform as an effective, competitively neutral third party provider of critical numbering administration and portability services.

Respectfully Submitted,

MCI WorldCom, Inc.



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April 16, 1999

CERTIFICATE OF SERVICE

I, Barbara Nowlin do hereby certify that the foregoing Comments were hand-delivered on this 16th day of April, 1999, to the following:

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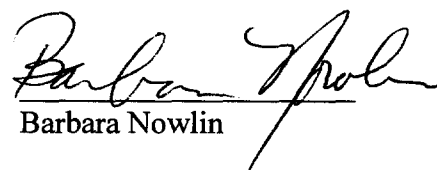
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